

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs April 22, 2008

**STATE OF TENNESSEE v. KIMBERLY A. BUSH O'NEAL**

**Direct Appeal from the Circuit Court for Bedford County  
No. 10,782 Lee Russell, Judge**

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**No. M2007-01617-CCA-R3-CD - Filed May 8, 2008**

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The Defendant, Kimberly A. Bush O'Neal, was declared a motor vehicle habitual offender (MVHO) by order of the Bedford County Circuit Court. The Defendant subsequently filed a motion, pursuant to Rule 60 of the Tennessee Rules of Civil Procedure, asking the Bedford County Circuit Court to declare the MVHO order void because it did not comply with Rule 58 of the Tennessee Rules of Civil Procedure. In the Circuit Court and on appeal, the Defendant claims the order is void because the court clerk did not sign the certificate of service. After a thorough review of the record and the applicable law, we conclude the order was not void and affirm the trial court's judgment.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and JAMES CURWOOD WITT, JR., JJ., joined.

C. Kelly Wilson, Shelbyville, Tennessee, for the Appellant, Kimberly A. Bush O'Neal.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Mark A. Fulks, Senior Counsel; Chuck Crawford, District Attorney General; Michael D. Randles, Assistant District Attorney General, for the Appellee, State of Tennessee.

**OPINION**

**I. Procedural History**

On May 22, 2006, the trial court issued an order that declared the Defendant an MVHO. The trial judge signed both the judgment and the certificate of service. The Defendant was present at the

hearing and knew about the order. The Defendant was later arrested for violating the order. She pled guilty, but she reserved the right to challenge the order's validity.

The Defendant filed a motion pursuant to Tennessee Rule of Civil Procedure 60.02 to have the order declaring her as an MVHO set aside. The trial court denied it, saying:

The trial court found that the order declaring the [Defendant] a motor vehicle habitual offender was a valid order, that a certificate of service signed by the judge hearing the case is not deficient so as to invalidate the order, and that no other grounds for relief under Rule 60 exist.

On appeal, the Tennessee Court of Appeals transferred the case to the Tennessee Court of Criminal Appeals, citing, "The defendant may appeal to the Court of Criminal Appeals any final action or judgment entered under the provisions of this part." T.C.A. § 55-10-614 (2006). The Court of Appeals concluded the order denying the Defendant's motion was a final judgment, and, as such, this Court has appellate jurisdiction over this appeal.

## **II. Analysis**

A trial court grants relief from an order at its own discretion. Tenn. R. Civ. P. 60.02 Subsequently, we review the trial court's judgment for an abuse of discretion. *Underwood v. Zurich Ins. Co.*, 854 S.W.2d 94, 96 (Tenn. 1993).

In Tennessee, a hearing, and any following order, declaring a defendant an MVHO is a civil matter. *State v. Malady*, 952 S.W.2d 440, 444 (Tenn. Crim. App. 1996). As a civil matter, it is governed by the Tennessee Rules of Civil Procedure. Rule 58.02 describes the requirements for entry of a judgment:

Entry of a judgment or an order of final disposition is effective when a judgment containing one of the following is marked on the face by the clerk as filed for entry:

- (1) the signatures of the judge and all parties or counsel, or
- (2) the signatures of the judge and one party or counsel with a certificate of counsel that a copy of the proposed order has been served on all other parties or counsel, or
- (3) the signature of the judge and a certificate of the clerk that a copy has been served on all other parties or counsel.

Tenn. R. Civ. P. 58.02. To properly seek relief in the trial court from a civil judgment, a defendant should file a motion in accordance with Rule 60.02 of the Tennessee Rules of Civil Procedure. Rule 60.02 provides:

On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) fraud

(whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (3) the judgment is void; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that a judgment should have prospective application; or (5) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1) and (2) not more than one year after the judgment, order or proceeding was entered or taken.

Tenn. R. Civ. P. 60.02.

The Defendant claims the order declaring her an MVHO is void, and she seeks relief under Rule 60.02(3). According to the Tennessee Court of Appeals, a judgment may be void only if the court issuing the order lacked jurisdiction or if it acted inconsistently with the due process of law. *Magnavox Co. of Tenn. v. Boles & Hite Const. Co.*, 583 S.W.2d 611, 613 (Tenn. Ct. App. 1979) (citing 11 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2862 (1 ed. 1973)). “In order to adjudicate a claim, a court must possess both subject matter jurisdiction and personal jurisdiction.” *Landers v. Jones*, 872 S.W.2d 674, 675 (Tenn. 1994). “Subject matter jurisdiction relates to the nature of the cause of action and the relief sought.” *Id.* It is “conferred by sovereign authority which organizes the court.” *Id.* On the other hand, personal jurisdiction “refers to the court’s authority to adjudicate the claim as to the person.” *Id.* Subject matter jurisdiction must be proven, while personal jurisdiction can be “conferred by express to implied consent.” *Id.* (citing *Davis v. Mitchell*, 178 S.W.2d 889, 900 (Tenn. Ct. App. 1944)).

We conclude herein that the trial court had subject matter over the Defendant. The “proceedings to revoke or suspend driving privileges are civil in nature and not criminal.” *State v. Jones*, 592 S.W.2d 906 (Tenn. Crim. App. 1979). Such a civil case was properly heard in the Bedford Circuit Court because “the circuit court is a court of general jurisdiction.” T.C.A. § 16-10-101 (2006).

Similarly, we conclude that the trial court also had personal jurisdiction over the Defendant. The Defendant was present at the hearing when the order was issued, and there is no record that she ever contested personal jurisdiction. As such, the Defendant has waived any issue of a lack of personal jurisdiction.

The trial court also acted consistently with due process of the law. “The Due Process Clause of the Fourteenth Amendment and Article I, section 8 of the Tennessee Constitution require a hearing at a meaningful time and in a meaningful manner before the government interferes with significant property interests.” *Wanda Joyce Pittman v. Larry Erwin Pittman*, Nos. 01-A-01-9301-CH00014, 87-077, 1994 WL 456348, at \*4 (Tenn. Ct. App. Aug. 24, 1994), *no Tenn. R. App. P. 11 application filed* (citing *Memphis Light, Gas, & Water Div. v. Craft*, 436 U.S. 1, 19 (1978) and *Cooper v. Williamson County Bd. of Educ.*, 803 S.W.2d 200, 202 (Tenn. 1990)). The Defendant in this case attended the hearing in which the court determined she was an MVHO. This shows she had

notice of the hearing, and it was held at a meaningful time so that she could participate in it to protect her significant property interests. In addition, there is no claim that the hearing was not meaningful. We fail to see any due process violations. Because we conclude the Bedford Circuit Court had jurisdiction over both the Defendant and the subject matter, and the Court provided the Defendant with due process, the judgment declaring the Defendant to be an MVHO is not void under Tennessee Rule of Civil Procedure 60.02 (3).

The order is also not void under provision (5) of Rule 60.02. Provision (5) operates as a catch-all, allowing the court to order relief for any other justifiable reason. The Tennessee Supreme Court chose to interpret this catch-all provision narrowly, and it may only be used in “cases of overwhelming importance or . . . [those] involving extraordinary circumstances or extreme hardship.” *Underwood v. Zurich Ins. Co.*, 854 S.W.2d 94, 97 (Tenn. 1993). The Defendant claims here that the order is void because the trial judge signed the certificate of service, as opposed to the court clerk. This trivial distinction does not fall within the narrow parameters where relief may be given. The signature requirements in Rule 58 help ensure that the parties have notice of the order. “[Rule 58] introduces the concept of notice of entry of judgment . . . . When a party anticipates . . . a judgment, decree or order [it] will not be promptly entered, the party may be assured of notice of entry of judgment by employing this Rule.” Tenn. R. Civ. P. 58, Advisory Comm’n Cmts. In this case, the Defendant was present at the hearing, so she had notice of the order declaring her an MVHO. The fact that the trial judge, as opposed to the court clerk, signed the certificate of service has no effect on the validity of the order. We conclude the trial court did not abuse its discretion, and the Defendant is not entitled to relief.

### **III. Conclusion**

After a thorough review of the record, we conclude the Defendant is not entitled to relief on this issue. The order declaring her to be an MVHO is valid. We affirm the trial court’s judgment.

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ROBERT W. WEDEMEYER, JUDGE